

Hearing Date/Agenda Number
P.C. 01/28/2004 Item:

File Number
CP03-061

Application Type
Conditional Use Permit

Council District 3 SNI 13th Street

Planning Area Central

Assessor's Parcel Number(s)
467-18-090

STAFF REPORT

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: Northeast corner of East Santa Clara Street and 7th Street (301 E. Santa Clara Street)

Gross Acreage: 0.22

Net Acreage: 0.22

Net Density: n/a

Existing Zoning: CG-Commercial General

Existing Use: Public eating establishment

Proposed Zoning: No change

Proposed Use: Public eating establishment with late night use until 3 a.m.

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
General Commercial with Transit Oriented Development Corridor
Overlay

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Day Care Center

RM – Multiple Family Residential

East: Parking Lot

CG – Commercial General

South: Restaurant

CG – Commercial General

West: Public School

CG-Commercial General

ENVIRONMENTAL STATUS

Completed by: FLB

☐ Environmental Impact Report found complete
☐ Negative Declaration
☐ Negative Declaration adopted on

[x] Exempt
[] Environmental Review Incomplete

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: F. Lee Butler

Police Department - Attached

Other Departments and Agencies

Historic Landmarks Commission Design Review Subcommittee - Attached

GENERAL CORRESPONDENCE

Walter and Patti Phillips - Attached

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On October 16, 2003 the applicant, Charlie Borello, submitted an application for a Conditional Use Permit requesting (1) to operate the City Bakery and Café restaurant between the hours of midnight and 3:00 a. m., and (2) various exterior modifications to the existing commercial building at the northeast corner of East Santa Clara Street and North 7th Street. Since November 30, 1984 the Zoning Ordinance has required that all commercial uses in Commercial Zoning Districts operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit.

The existing building was originally constructed circa 1910, however, significant modifications have been made to the structure since that time. Currently, the structure is listed as a Structure of Merit on the City of San José Historic Resources Inventory.

The subject restaurant occupies the corner tenant space in an existing building nearest to the intersection of E. Santa Clara and N. 7th Streets. It occupies approximately one-third of the existing structure comprising approximately 44 linear feet along N. 7th Street. A single, separate restaurant occupies the remaining two-thirds of the structure, approximately 93 linear feet along N. 7th Street.

Surrounding land uses include a restaurant within a commercial structure to the south across Santa Clara Street, a parking lot to the east, a day care center to the north, and a public school to the west across 7th

accommodate access and circulation. The proposed exterior changes are in character with the historical conditions of the structure, as discussed below in more detail.

The applicant has an existing Type 41 permit for on-sale beer and wine from the Department of Alcoholic Beverage Control to allow the on-sale consumption of alcoholic beverages as an incidental use to the public eating establishment. The on-sale consumption of alcoholic beverages is an incident to the operation of a public eating establishment pursuant to SJMC 20.200.940.

Although telephone directory advertisements and testimony of the neighbors have indicated that the previous restaurant owners operated after midnight, no Planning permits authorized this after midnight operation. Under the CG-Commercial General Zoning District, hours of operation are limited to between 6:00 a.m. and 12:00 midnight. The existing restaurant does not propose outdoor seating.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303. Under this section, projects qualifying for exemption include those that involve the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. In this instance, the project qualifies under this exemption in that it proposes a late night use of an existing restaurant where only minor modifications to the exterior are proposed.

GENERAL PLAN CONFORMANCE

The proposed late night operation of a restaurant use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that the designation includes both strip commercial areas along major thoroughfares as well as freestanding commercial establishments such as the one proposed.

ANALYSIS

The key issues analyzed for the proposed late night use include: (1) consistency with Council Policy 6-27, Evaluation of 24-hour Uses, (2) conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures for proposed exterior changes to the structure, and (3) parking.

Consistency with the Policy for Evaluation of 24-hour Uses

The attached Policy for Evaluation of 24-hour Uses is intended to provide guidelines for the appropriate

Use Separation

The Policy states that generally, 24-hour uses should not be located within 300 feet of residential properties. It continues, however, to state that the separation may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on intensity of use, location of other buildings and physical features, neighborhood input, or other relevant criteria.

The closest residential property to the subject property is two parcels to the north, approximately 175 feet from the subject tenant space. Approximately 93 feet of the subject building extends northward beyond the subject tenant space. Beyond the remainder of the existing building, the vacant rear yard of the adjacent day care center accounts for an additional 82 feet of separation. The closest residential parcels to the south are separated from the subject site by E Santa Clara Street and by approximately 125 linear feet of a commercial building located at the southeast corner of N 7th Street and E Santa Clara Street.

The proposed sit-down restaurant, unlike nightclubs and drive-through restaurant uses, tends to be less problematic when in close proximity to residential uses, as discussed in the Policy. Furthermore, intervening streets and existing commercial structures separate the subject tenant space from the residential areas to compensate for a full 300-foot separation. Given the nature and location of the proposed sit-down restaurant, it is unlikely that any noise from the proposed use will be audible or distinguishable at the closest residential property line.

Outdoor Activities

No outdoor seating is currently proposed or permitted at the subject site. No outdoor activities associated with the restaurant, other than truck deliveries, maintenance, and garbage collection, are currently proposed or permitted in conformance with the policy.

Police Issues

The policy states that, “crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses”. In a memo dated November 15, 2003, Dave Kirkendall of the San José Police Vice Unit indicated that the request to be open until 3 a.m. is not supported by the Police Department. The same memo, however, indicated that the reported crime statistics as defined by the State Business and Professions Code (B&P) Section 23958.4(c) are not over the 20 percent crime index, thus the location is not considered an unduly concentrated crime area per B&P Section 23958.4(a)(1).

Restroom Facilities

Interior restroom facilities within the restaurant would remain open and available during the late night business hours in conformance with the policy.

Noise

No amplified sound is proposed in conjunction with the restaurant use. SJMC 20.200.940 allows instrumental and vocal music to be provided for the listening pleasure of patrons as an incidental use to the proposed public eating establishment between the hours of 6:00 a.m. and 10:00 p.m. Vocal and instrumental music after these times as well as dancing, karaoke, comedy, and acting, are considered entertainment uses that would require a subsequent Conditional Use Permit. Given the proposed use as a public eating establishment, and the separation between it and the nearest residential uses, it is unlikely that noise from the proposed use will be audible or distinguishable from the nearby residential uses.

Lighting

As shown on the plan set, three existing electroliers illuminate the 68.75 linear feet of project frontage along East Santa Clara Street. No new exterior lighting fixtures are proposed as part of this permit. However, a condition of the draft resolution requires that the proposed corner entryway, inside of the three, rounded-corner-arches, remain illuminated during all hours of darkness. In addition, the applicant must file a Permit Adjustment for design approval of all exterior lighting prior to the issuance of building permits.

Cleaning and Maintenance

No cleaning and maintenance of outdoor areas which utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m. in conformance with the policies.

Site Improvements

As a part of this permit, various exterior upgrades to the subject structure are proposed. Conformance of the proposed changes to the historical character of the structure is discussed below in more detail.

Mitigation Management Plan

Conditions of approval have been incorporated into the draft Resolution to mitigate potential impacts of

littering, loitering, and noise are substantially reduced by the nature of the proposed use.

Conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures

A "Historical Report and Evaluation for the Proposed Remodel of 301 East Santa Clara Street, San José, California" prepared by Urban Programmers concluded the subject structure qualifies as a Structure of Merit using the City of San José Historic Evaluation Criteria. It also concluded the subject structure does not qualify for listing on the California Register of Historic Resources. Therefore, it does not qualify as a historically significant building under CEQA.

During the Preliminary Review stage, the project was presented to the Historic Landmarks Commission (HLC) Design Review Subcommittee in June, 2003 and September, 2003. At the first meeting, the Subcommittee made several recommendations for improving the exterior changes to the project, and the architect responded by incorporating the Subcommittee's recommendations into his next presentation. At the September Subcommittee meeting, the HLC members who were present commended the applicant and architect for the changes and progress they made in preserving the historic structure.

The rounded corner element of the structure was historically used as the entrance to the subject tenant space. However, it is currently enclosed with a solid, rounded wall. The proposed project would remove the existing walls and return the corner element to its historical entryway. The applicant also proposes to remove the existing entryway on the E. Santa Clara Street elevation and restore the original window openings on that façade. Similarly, the project proposes to create a new window opening on the S. 7th Street elevation to match the historic window openings. The proposed molding on the E. Santa Clara Street parapet is also sympathetic with the historical character of the structure. Given the reinstatement of multiple historical elements of the structure, staff believes the proposed exterior changes conform to the Secretary of the Interior's Standards for Rehabilitation of Historic Structures.

Parking

The property was developed prior to 1965 as a church use with no parking. In order for parking to now be required, the proposal must constitute a "substantial change" pursuant to SJMC Section 20.90.210(A). Generally, this means that there would have to be a 15 percent increase in the required number of spaces between the previous and proposed uses. Per Table 20-190 of the SJMC, a church use currently requires one parking space per 30 square feet of area designated for assembly, used together or separately for worship. Per the same table, a public eating establishment requires one parking space per 2.5 seats or one parking space per 40 square feet of dining area, whichever requires the greater number of parking spaces. A generously low approximation of assembly area for the previous church use would be 1,500 gross square feet, thereby requiring 43 parking spaces. The current proposal, with approximately 975 gross square feet

CONCLUSION

While the subject site is not located in the Downtown Core Area, it is located a short distance to the east outside of the Core, where 24-hour uses are generally encouraged. Furthermore, the project is in close proximity to San José State University. The proposed restaurant would provide both SJSU students and downtown visitors with a late-night place to eat. Correspondence is attached from Patti Phillips, President of the Horace Mann Neighborhood Association.

The restaurant tenant space is located in the corner tenant space directly adjacent to both E Santa Clara Street and N 7th Street. Because of its location directly adjacent to a major connecting street between downtown San José and East San José, the location is well suited for 24-hour operation and provides good opportunities for direct surveillance from the street.

PUBLIC OUTREACH

The applicant attended two community meetings to present his proposal to the neighborhood. He introduced the proposed project to the community at a regularly scheduled Horace Mann Neighborhood Association meeting and at a Strong Neighborhoods Initiative 13th Street Neighborhood meeting. The proposal received a mostly favorable response at both meetings, and attendees at the 13th Street SNI meeting suggested that a one-year compliance review hearing be held. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit and include the following facts, findings, and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review.

6. The applicant is the owner of a 'sit-down' restaurant at the corner tenant space of the existing structure at the northeast corner of E. Santa Clara Street and N. 7th Street.
7. Per Title 20 of the San José Municipal Code, the current restaurant hours of operation are limited to 6:00 a.m. to 12:00 midnight. The restaurant is proposing to extend its operating hours past midnight until 3 a.m.
8. The project also proposes various exterior changes to the existing structure listed on the Historic Resources Inventory.
9. The project was presented to the Historic Landmarks Commission (HLC) Design Review Subcommittee in June, 2003 and September, 2003. At the September Subcommittee meeting, the HLC members who were present commended the applicant and architect for the changes and progress they made in preserving the historic structure.
10. The site was developed prior to 1965 as a church use, and did not provide any parking at the time of its development. Because the restaurant use requires fewer parking spaces than the church use, there is not a "substantial change" in use per SJMC Section 20.90.210(A). Therefore, the applicant is not required to meet the parking standards of the current Zoning Code.
11. The proposed use is located approximately 175 feet from the closest residential property line.
12. The project is separated from the nearest residential uses by the adjacent tenant spaces in the same commercial structure and by the rear yard area of an existing day care center.
13. The existing restaurant does not provide amplified music for entertainment purposes.
14. Interior restroom facilities within the restaurant are provided and are to remain open and available during the late night business hours.
15. The Police Department has indicated that the reported crime statistics as defined by the State Business and Professions Code (B&P) Section 23958.4(c) are not over the 20% crime index, thus the location is not considered unduly concentrated crime area per B&P Section 23958.4(a)(1).
16. No outdoor seating is currently proposed or permitted at the subject site. No outdoor activities, other than truck deliveries, maintenance, and garbage collection, are currently proposed or permitted.
17. The applicant attended two community meetings to present the proposal to the neighborhood, and the

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act. The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303. Under this section, projects qualifying for exemption include those that involve the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. In this instance, the project qualifies under this exemption in that it proposes a late night use of an existing restaurant where only minor modifications to the exterior are proposed.
4. The proposed project is consistent with the intent of the Council Policy 6-27 for Evaluation of 24-hour Uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be signed, notarized, and returned to the Department of City Planning within 60 days from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** The proposed late night use shall apply only to City Bakery and Cafe as shown on the approved plans entitled, "301 E. Santa Clara St.", received in the Planning Divisions on October 16, 2003, on file with the Department of Planning, Building, and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
4. **Exterior Clean Up.** The applicant shall be responsible for removing any litter (which emanates from the subject use) at the subject site and on all adjacent properties within 300 feet of the subject property on a daily basis. Exterior clean up and maintenance activities including garbage pick up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. No cleaning and maintenance for outdoor areas that utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m.

7. **Lighting.** The proposed corner entryway, inside of the three, rounded-corner-arches, must remain illuminated during all hours of darkness. Prior to the issuance of a building permit, the applicant shall file a Permit Adjustment for design approval of all exterior lighting prior to the satisfaction of the Director of Planning, Building and Code Enforcement.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
9. **Neighborhood Complaints.** Neighborhood complaints related to noise, litter, graffiti, and other disturbances should be relayed to the Code Enforcement Division at (408)277-4528. The list of complaints on record is to be made available to the Planning Commission at the one-year Compliance Review.
10. **Hours of Operation.** The restaurant use is allowed to operate between the hours of 6:00 a.m. and 3:00 a.m., seven days a week, for service within the interior of the restaurant building. No outdoor waiting or seating areas are approved with this project.
11. **Entertainment.** Instrumental and vocal music may be provided for the listening pleasure of patrons as an incidental use to the public eating establishment use between the hours of 6:00 a.m. and 10:00 p.m. Vocal and instrumental music after said times as well as other entertainment, including but not limited to, dancing, karaoke, comedy, and acting, shall be considered entertainment uses that will require a subsequent Conditional Use Permit.
12. **Alcoholic Beverages.** Alcoholic beverages may be sold by right under code, offered for sale or served to patrons for consumption on the premises as an incidental use only to a public eating establishment in conformance with all other applicable legal requirements and with appropriate permits. Drinking establishments including taverns, bars, cocktail lounges, nightclubs, and similar uses are not allowed with this permit and shall require a subsequent Conditional Use Permit. In the event alcoholic beverage service is proposed, the applicant shall obtain all necessary permits from the State Alcoholic Beverage Control Agency. Said permits shall be maintained in good standing.
13. **Fire Department Comments.** The applicant is to comply with all Fire Department comments at the plan review stage.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) years from and

3. **Renewal.** Except as otherwise conditioned in this permit, the permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
 4. **Compliance Review.** A Compliance Review Hearing is to be held with the Planning Commission one year after the issuance of this permit. The purpose of the hearing will be to provide the public with a forum to express any concerns related to the proposed use. The Planning Commission will be given the opportunity to amend the conditions of or revoke this permit based on the public input and/or crime statistics resulting from the proposed use up to that date. The Planning Commission may require additional Compliance Review Hearings at any time during the length of this permit.
 5. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Charles Huang, 995 Rose Avenue, Mountain View CA 94040
Building Division (2)